

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:11-CR-58-BR

UNITED STATES OF AMERICA

v.

HILARIA RODRIGUEZ

ORDER

This matter is before the court on defendant's motion to compel the government to show cause why it has not filed a motion pursuant to Federal Rule of Criminal Procedure 35(b). (DE # 125.)

Under Rule 35(b), the decision to move for reduction of sentence is solely in the discretion of the Government. The district court is without authority to compel such a motion unless Defendant can show his cooperation is complete, and that the Government breached the plea agreement or the Government's failure to file resulted from an unconstitutional motive or was not rationally related to a legitimate government goal.

United States v. Brown, Crim. No. 3:09-825-CMC, 2017 WL 3621485, at *1 (D.S.C. May 18, 2017) (citing Wade v. United States, 504 U.S. 181, 185-86 (1992); United States v. Butler, 272 F.3d 683, 686 (4th Cir. 2001)). Here, defendant and the government did not enter into a plea agreement. In addition, defendant makes no argument that the government's refusal to file a Rule 35(b) motion is based on an unconstitutional motive or is not rationally related to a legitimate governmental interest. Accordingly, defendant's motion is DENIED.

This 2 October 2018.



W. Earl Britt
Senior U.S. District Judge